



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt resolution approving Agreement for Property Tax Allocation Upon Annexation with County of San Joaquin and Agreement for the Administration of the County Facilities Fee (CFF) Program with County of San Joaquin and authorizing the Mayor and the City Manager to execute the agreements on behalf of the City

**MEETING DATE:** May 4, 2005

**PREPARED BY:** Deputy City Attorney and Community Development Interim Co-Directors

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**RECOMMENDED ACTION:** That the City Council adopt a resolution approving Agreement for Property Tax Allocation Upon Annexation with County of San Joaquin and Agreement for the Administration of the County Facilities Fee (CFF) Program with County of San Joaquin and authorizing the Mayor and the City Manager to execute the agreements on behalf of the City

**BACKGROUND INFORMATION:** On March 16, 2005 the Council approved Resolution No. 2005-52 establishing County Facilities Fees for all future development within the City of Lodi and on April 6, 2005 (following introduction at its March 16, 2005 meeting) adopted Ordinance No. 1758 amending Title 15 "Buildings and Construction" of the Lodi Municipal Code by adding Chapter 15.66 relating to County Facility Fees. However, action was inadvertently not taken at the March 16, 2005 Council meeting to approve the agreements with County of San Joaquin relating to property tax allocation and county facility fees. Staff therefore requests Council take the recommended action to correct the oversight.

  
\_\_\_\_\_  
Janice D. Magdich  
Deputy City Attorney

**FUNDING:** N/A

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**APPROVED:**   
\_\_\_\_\_  
Blair King, City Manager

County of San Joaquin & City of Lodi

**Agreement For Property Tax Allocation Upon Annexation**

A-05- \_\_\_\_\_

THIS AGREEMENT is entered into this 6th day of May, 2005 by and between the City of Lodi, a California municipal corporation, hereinafter referred to as "CITY" and the County of San Joaquin, hereinafter referred to as "COUNTY";

PREAMBLE:

CITY and COUNTY acknowledge that both CITY and COUNTY have increasing service responsibilities with restrained revenue resources. There is no consensus between CITY and COUNTY regarding the analysis of local government funding issues arising from annexations. CITY and COUNTY each have their own distinctive and differing perspectives on costs and revenues generated by annexed areas. However, there is a statutory requirement for a Property Tax Allocation Agreement for the Local Agency Formation Commission to annex land.

WITNESSETH:

WHEREAS, Article 13A, Section 1 of the Constitution of the State of California limits ad valorem taxes on real property to one percent (1%) of full cash value; and

WHEREAS, Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code (Sections 95 et. seq.) provides for the allocation of property tax revenues; and

WHEREAS, CITY and COUNTY must have an agreement for the allocation of property tax revenues upon annexation.

NOW, THEREFORE, in consideration of the premises and the following terms and conditions, the parties hereto agree as follows:

1. DEFINITIONS. The words and phrases in this Agreement shall have meanings as set forth below:

- A. "Annexation Property Tax Base" shall mean the Base Year sum of the ad valorem

tax allocated to Detaching Special Districts, as defined herein, and to COUNTY within the area being annexed.

- B. "Detaching Special Districts" shall mean those political subdivisions organized pursuant to the laws of the State of California whose functions within the area being annexed are terminated and/or assumed by CITY.
- C. "Detachment" shall mean the removal from a special district of any portion of the territory of that special district.
- D. "Base Year" shall mean the assessed valuation applicable to the property and improvements within the area being annexed at the time the application for annexation is submitted to the Local Agency Formation Commission (LAFCO).
- E. "Incremental Growth" shall mean the total increase or decrease in the property tax base over the base year within the annexed area.

## 2. PROPERTY TAX ALLOCATION.

Upon each annexation, property tax allocation shall be determined pursuant to one of the following provisions:

- A. Annexations that involve Detachment from a fire district. CITY and COUNTY shall, upon each annexation that, in whole or in part, involves Detachment from a fire district, share in the Annexation Property Tax Base and all Incremental Growth thereof pursuant to the ratio of 20% CITY and 80% COUNTY for all portions of the annexation that involve Detachment from a fire district.
- B. Annexations that do not involve Detachment from a fire district. CITY and COUNTY shall, upon each annexation that, in whole or in part, does not involve Detachment from a fire district, share in the Annexation Property Tax Base and Incremental Growth thereof, for all portions of the annexation that do not involve Detachment from a fire district, as follows:
  - i. Consolidated fire districts established prior to June 15, 1996, pursuant to the ratio of 20% CITY and 80% COUNTY.

- ii. Consolidated fire districts established between June 15, 1996 and June 15, 2003, pursuant to the ratio of 15% CITY and 85% COUNTY.
  - iii. Consolidated fire districts established subsequent to June 15, 2003, pursuant to the ratio of 10% CITY and 90% COUNTY.
3. APPLICATION OF AGREEMENT.
- A. Term. The provisions of this Agreement shall apply to all pending and future annexations as of October 1, 2004 and for a period of seven (7) years from the date of execution.
  - B. Effective date. The effective date of property tax allocation for each annexation shall be determined in accordance with Government Code Section 54902 and any succeeding statutory provisions. Currently, statements of boundary change must be filed with the State Board of Equalization on or before December 1 of the year immediately preceding the year in which property taxes are to be shared.
  - C. Future property taxes. The provisions of this Agreement would also apply to any property exempt from ad valorem taxes which subsequently became taxable within the area to be annexed.
  - D. Terms of subsequent agreements. Should County execute an agreement with another city, with terms more favorable than those contained in Section 2, Property Tax Allocation, or Section 7, County Capital Facilities Fees, County shall negotiate comparable terms with City and execute an amendment to this Agreement.
4. JOINT REVIEW.
- CITY and COUNTY may jointly review COUNTY property tax records from time to time or as requested by CITY to verify accurate distribution under the Agreement.
5. EXCLUSIONS.
- A. The Agreement shall not apply to proposed annexations areas where the COUNTY is currently receiving transient occupancy tax revenues. Annexation agreements for areas where the COUNTY is currently receiving TOT revenues will be

individually negotiated between the COUNTY and CITY to address the potential TOT loss to the COUNTY.

- B. The Agreement shall not apply to proposed annexation areas where gross taxable sales, subject to sales and use taxes, exceed \$1 million in the most recent year that taxable sales data is available from the State Board of Equalization or any other State successor organization that may provide taxable sales information. Annexation agreements for areas containing over \$1 million in taxable sales will be individually negotiated between the COUNTY and CITY to address the potential sales and use tax loss to the COUNTY.
- C. The Agreement shall not apply to annexations that, in whole or in part, include more than 50 acres of COUNTY owned property. Such annexations will be considered under separately negotiated and mutually beneficial annexation and development agreements.

6. REGIONAL COOPERATION.

In consideration of the unique and mutual funding difficulties of both CITY and COUNTY, CITY and COUNTY will jointly develop and seek to implement changes in their activities which will improve the cost effectiveness of service delivery by both CITY and COUNTY, including but not limited to consolidation of services between governmental agencies and inter-agency contracting for services.

7. COUNTY CAPITAL FACILITIES FUNDING.

CITY recognizes the importance of regional services and facilities provided by the COUNTY for all residents of the entire COUNTY.

- A. CITY shall contribute to COUNTY's funding for regional facilities by adopting a County facilities fee ordinance and resolution enacting and implementing the County Capital Facilities Fee (CCFF) Program. CITY shall adopt this ordinance and resolution prior to or concurrent with execution of this Agreement.

8. URBAN DEVELOPMENT COOPERATION

A rational pattern of urban land uses is a common goal of CITY and COUNTY, as expressed in their respective General Plans. The efficient construction of urban infrastructure and the delivery of municipal services requires cooperation between COUNTY and CITY within areas designated for urban development, specifically CITY'S Sphere of Influence.

- A. County General Plan Policy. COUNTY affirms the policies expressed in its General Plan that support concentration of additional major urban development within urban centers.
- B. Urban Planning and Development Cooperation. The preparation of land use and infrastructure plans within CITY'S Sphere of Influence, consistent with statutory guidelines, is encouraged. COUNTY shall refer all land use applications requiring discretionary approval within CITY'S Sphere of Influence to CITY for review and comment.
- C. Capital Facilities Funding and Cooperation. CITY and COUNTY will cooperate in the development of infrastructure plans within CITY'S Sphere of Influence. Relative to areas for which CITY and COUNTY have jointly adopted master plans for infrastructure and, upon request by CITY, COUNTY will schedule an Area Development Impact Fee (ADIF) for public hearing. This ADIF will incorporate CITY development impact fees that are specifically required to support jointly planned infrastructure. COUNTY shall cooperate in the construction of capital facilities thus funded.

9. COMMUNITY SERVICE FACILITIES

- A. Siting of Community Facilities. CITY and COUNTY recognize the importance of community services provided by COUNTY and other providers and also the importance of these services being convenient to residents of COUNTY making use of these services. Accordingly, as a part of the land use planning and pre-zoning for proposed municipal annexations, CITY will cooperate with COUNTY

to identify community service needs of the local community and, where appropriate, work with COUNTY to locate potential sites for these community services facilities.

- B. CITY may elect to adopt or add to existing development impact fees in lieu of providing community service facility sites. Such fees may be administered within CITY or may be included as a component of the above-mentioned County Capital Facilities Fee.

10. TERMINATION.

This Agreement may be terminated, by any party hereto, upon 6 months written notice which termination shall terminate the agreement for each and every party. Said termination shall not affect annexations for which the LAFCo Executive Officer has issued a certificate of filing prior to the end of the 6 month termination period.

11. GOVERNING LAW AND ATTORNEYS' FEES.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by either party because of any default under this Agreement or to enforce any provision of this Agreement, or to obtain a declaration of rights hereunder, the prevailing party shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court. The standard of review for determining whether a default has occurred under this Agreement shall be the standard generally applicable to contractual obligations in California.

12. NOTICES.

Any notice of communication required hereunder among CITY and COUNTY must be in writing, and may be given either personally, by telefacsimile (with original forwarded by regular U.S. Mail) or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given and received when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's

facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday, or holiday shall be deemed to have been given and received on the next normal business day. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Such notices or communications shall be given to the parties at their addresses set forth below:

To CITY (City Manager):

With Copies To (City Attorney):

Blair King

D. Stephen Schwabauer

City of Lodi

City of Lodi

221 W. Pine Street

221 W. Pine Street

Lodi, CA 95240

Lodi, CA 95240

Telefacsimile: (209) 333-6807

Telefacsimile: (209) 333-6807

To COUNTY (County Administrator):

With Copies To (County Counsel):

Manuel Lopez

Terrence R. Dermody

Courthouse, Room 707

Courthouse, Room 711

222 E. Weber Avenue

222 E. Weber Avenue

Stockton, California 95202

Stockton, California 95202

Telefacsimile: (209) 468-2875

Telefacsimile: (209) 468-2875

Any party hereto may at any time, by giving ten (10) days written notice to the other parties, designate any other address or facsimile number in substitution of the address or facsimile number to which such notice or communication shall be given.

13. SEVERABILITY.

If any provision of this Agreement is held invalid, void, or unenforceable but the remainder of this Agreement can be enforced without failure of material consideration to any party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended by mutual consent of the parties. Notwithstanding this severability clause, each subsection of Section 2. Property Tax Allocation and Section 5. Exclusions, is material and substantial and the failure of said subsection is the failure of material consideration, causing the Agreement to be void from the date that the subsection is held



invalid.

14. FURTHER ASSURANCES.

Each party shall execute and deliver to the other party or parties all such other further instruments and documents and take all such further actions as may be reasonably necessary to carry out this Agreement and to provide and secure to the other party or parties the full and complete enjoyment of its rights and privileges hereunder.

15. CONSTRUCTION.

All parties have been represented by counsel in the preparation of this Agreement and no presumption or rule that ambiguity shall be construed against a drafting party shall apply to interpretation or enforcement hereof. Captions on sections and subsections are provided for convenience only and shall not be deemed to limit, amend, or affect the meaning of the provision to which they pertain.

16. OTHER MISCELLANEOUS TERMS.

The singular includes the plural; the masculine gender includes the feminine, "shall" is mandatory; "may" is permissive.

17. TIME.

Time is of the essence of each and every provision hereof.

18. COUNTERPART.

This agreement may be executed in counterpart agreements, binding each executing party as if said parties executed the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Blair King  
City Manager, City of Lodi

\_\_\_\_\_  
Manuel Lopez  
County Administrator

[Signatures continue on page 9]

CITY OF LODI

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John Beckman  
Mayor, City of Lodi

Approved as to Form  
D. Stephen Schwabauer  
City Attorney

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By Janice D. Magdich  
Deputy City Attorney

ATTEST: Susan J. Blackston  
City Clerk

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Dated: \_\_\_\_\_

COUNTY OF SAN JOAQUIN

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Steven Gutierrez, Chairman  
Board of Supervisors

Approved as to Form  
Terrence R. Dermody  
County Counsel

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By David Wooten,  
Assistant County Counsel

ATTEST: Lois M. Sahyoun  
Clerk of the Board of Supervisors

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Dated: \_\_\_\_\_

County of San Joaquin & City of Lodi

**AGREEMENT FOR THE ADMINISTRATION OF THE  
COUNTY FACILITIES FEE (CFF) PROGRAM**

A-05-\_\_\_\_\_

AGREEMENT entered into this 6th day of May, 2005 by and between the County of San Joaquin, hereinafter referred to as "COUNTY" and the City of Lodi, a California municipal corporation, hereinafter referred to as "CITY".

WHEREAS, COUNTY has prepared a Nexus Report dated September 2003 ("Nexus Report") that provides the details of the San Joaquin County Facilities Fee Program ("CFF"); and

WHEREAS, CITY has adopted an Ordinance Establishing County Facilities Fee Program and a Resolution Establishing County Facilities Fees; and

WHEREAS, COUNTY and CITY wish to specify certain technical procedures for the administration of the County Facilities Fee Program.

NOW, THEREFORE, in consideration of the premises and the following terms and conditions, the parties hereto agree as follows:

1. Annual Report. On or before December 31 of each year, COUNTY shall submit an Annual Report regarding the CFF program to CITY. The Annual Report shall include the information and findings required by Government Code Section 66000 et seq.
2. Cost Index. The CFF program contains an annual cost index based on the Engineering News Record. COUNTY shall transmit documentation of any fee adjustment based on the indexing of costs and CITY shall adjust the CFF fee schedule accordingly.
3. Nexus Report. COUNTY may, at its own expense, conduct reviews of projects within the CFF program and prepare periodic updates of the Nexus Report. COUNTY will transmit such updates to CITY with reconciliation to the current fee schedules. If a higher or lower funding requirement is identified, COUNTY will formally request that CITY consider amendment of the fee schedule consistent with the Nexus Report.
4. Administrative Fee. CITY may impose an administrative fee in an amount not to exceed the actual costs of administering and collecting the CFF. Said administrative fee shall be in addition to the amount of the CFF as set forth in the Nexus Report. The provisions of Paragraph 10 shall not apply to this administrative fee.
5. Collection of County Capital Facility Fee. CITY shall collect the County Capital Facility Fee in the amount as required pursuant to the Ordinance and Resolution adopted by CITY.
6. Remittance of Proceeds. CITY shall remit any CFF proceeds to COUNTY no less frequently than once each calendar quarter. COUNTY shall account for all program revenues and appropriations within CFF trust accounts.

7. Audits. COUNTY may conduct, at COUNTY's expense, audits of CFF Program funds collected by CITY. Audits shall be conducted at CITY and shall occur within 180 days of the date that CITY provides COUNTY with an annual statement of collections, in a form to be provided by the County Auditor-Controller. COUNTY shall provide at least ten (10) days' written notice of the date it wishes to schedule the audit.

8. Undercollection. If COUNTY determines, through an audit or otherwise, that CITY has undercollected fees with regard to a particular transaction, COUNTY may seek remediation only for those transactions, for which fees were undercollected, which occurred within the current fiscal year or the fiscal year immediately preceding the determination of undercollection. COUNTY shall provide written notice to CITY of each transaction for which undercollection is claimed, providing the date of the transaction, the parties to the transaction, and the amount of undercollection claimed. Once CITY receives written notice of the undercollection, CITY shall make a reasonable, good faith effort to recover the fees owed and, if successful, shall remit such fees to COUNTY. In no event shall CITY be liable to remit amounts owed due to undercollection unless and until CITY shall recover same against the entity who made the underpayment. Further, in no event shall CITY be liable to COUNTY for undercollected fees unless such undercollection occurs as a direct result of the gross or sole negligence or intentional acts of CITY, its officials, officers, employees, or agents.

9. Fee Credits. COUNTY must approve any fee credits or reimbursements to be granted to specific development projects. Such credits or reimbursements shall be limited to the portion of a project's fee obligation that is met through direct construction of facilities or through financing districts.

10. Defense and Indemnification. COUNTY shall defend (at its sole cost), indemnify and hold harmless the CITY, its officials, officers, employees and agents from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, in any manner arising out of or incident to CITY's adoption, administration, and collection of the CFF, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses that are actually ordered to be paid to any plaintiff as part of a final judgment entered by a court, save and except those claims, demands, causes of action, costs, expenses, liability, loss, damage, or injury arising out of CITY's sole and exclusive negligence and/or for that portion of any active negligence attributable to CITY and/or for any claim arising out of CITY's intentional act. Furthermore, if any legal action is served upon the CITY arising out of or incident to the adoption, administration, and collection of the CFF, the CITY shall immediately tender the defense of said legal action to the COUNTY and CITY shall reasonably cooperate in good faith with COUNTY in the defense of the legal action.

## 11. Miscellaneous.

11.1 Counterparts. This Agreement may be executed in counterparts, and each of the counterparts may be considered an original document.

11.2 Partial Invalidity. If any term or provision of this Agreement shall be deemed to be invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby, and each remaining term and provision of this Agreement will be valid and be enforced to the fullest extent permitted by law.

11.3 Waivers. No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

11.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may not be modified except by an instrument in writing signed by the party to be charged.

11.6 Time of Essence. CITY and COUNTY hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof.

11.7 Construction and Survival of Provisions. This Agreement has been prepared by the parties and their respective professional advisors and reviewed by CITY and its professional advisers. Each party and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor of or against any party. The parties further agree that this Agreement will be construed to effectuate the normal and reasonable expectations of sophisticated parties.

11.8 Governing Law. The parties hereto expressly agree that this Agreement will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

12. Continued Validity of the Master Tax Sharing Agreement. In the event that a court of competent jurisdiction shall declare the CFF invalid or otherwise unenforceable, the Agreement for Property Tax Allocation Upon Annexation between the CITY and COUNTY shall remain valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Blair King  
City Manager, City of Lodi

CITY OF LODI

\_\_\_\_\_  
John Beckman  
Mayor, City of Lodi

\_\_\_\_\_  
Manuel Lopez  
County Administrator

COUNTY OF SAN JOAQUIN

\_\_\_\_\_  
Steven Gutierrez, Chairman  
Board of Supervisors

Approved as to Form  
D. Stephen Schwabauer  
City Attorney

Approved as to Form  
Terrence R. Dermody  
County Counsel

\_\_\_\_\_  
By: Janice D. Magdich  
Deputy City Attorney

\_\_\_\_\_  
By: David Wooten,  
Assistant County Counsel

ATTEST: Susan J. Blackston  
City Clerk, City of Lodi

ATTEST: Lois M. Sahyoun  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Dated: \_\_\_\_\_

RESOLUTION NO. 2005-91

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING  
AGREEMENT FOR PROPERTY TAX ALLOCATION UPON  
ANNEXATION WITH COUNTY OF SAN JOAQUIN AND AGREEMENT  
FOR THE ADMINISTRATION OF THE COUNTY FACILITIES FEE  
PROGRAM WITH COUNTY OF SAN JOAQUIN, AND FURTHER  
AUTHORIZING THE MAYOR AND THE CITY MANAGER TO EXECUTE  
THE AGREEMENTS ON BEHALF OF THE CITY

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WHEREAS, at the City Council meeting on March 16, 2005, the Council approved Resolution No. 2005-52 establishing County Facilities Fees for all future development within the City of Lodi; and

WHEREAS, at its April 6, 2005, City Council meeting, the Council adopted Ordinance No. 1758 amending Title 15 "Buildings and Construction" of the Lodi Municipal Code by adding Chapter 15.66 relating to County Facility Fees; and

WHEREAS, staff now recommends that the City Council approve the Agreement for Property Tax Allocation Upon Annexation with County of San Joaquin and Agreement for the Administration of the County Facilities Fee Program with County of San Joaquin and further authorize the Mayor and the City Manager to execute the agreements on behalf of the City of Lodi.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Agreement for Property Tax Allocation Upon Annexation with County of San Joaquin and Agreement for the Administration of the County Facilities Fee Program with County of San Joaquin and further authorizes the Mayor and the City Manager to execute the agreements on behalf of the City of Lodi.

Dated: May 4, 2005

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I hereby certify that Resolution No. 2005-91 was passed and adopted by the Lodi City Council in a regular meeting held May 4, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce,  
and Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk